

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs at Nashville July 18, 2023

JEFFREY GLENN MCCOY v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Gibson County
No. 19202 Clayburn Peeples, Judge**

No. W2022-01007-CCA-R3-PC

After pleading guilty to burglary and theft of property valued at over \$10,000, Jeffrey Glenn McCoy, Petitioner, was sentenced by the trial court to an effective sentence of 12 years as a Range III offender to be served consecutively to a sentence from South Carolina. His sentences were affirmed on direct appeal. *See State v. Jeffrey Glynn¹ McCoy*, No. W2016-01619-CCA-R3-CD, 2017 WL 6507232, at *1 (Tenn. Crim. App. Dec. 19, 2017), *perm. app. denied* (Tenn. Apr. 23, 2018) (“*McCoy I*”). Petitioner filed a pro se petition for post-conviction relief that was dismissed as untimely. On appeal, the State conceded error and this Court remanded for appointment of counsel and further proceedings. *See Jeffrey McCoy v. State*, No. W2019-00574-CCA-R3-PC, 2020 WL 1227304, at *1 (Tenn. Crim. App. Mar. 11, 2020) (“*McCoy II*”). On remand, the post-conviction court appointed counsel and an amended petition was filed. Petitioner alleged that trial counsel failed to inform him of his potential sentence, failed to litigate a motion to suppress, failed to present evidence that Petitioner was under the influence of methamphetamine, and failed to present evidence that Petitioner was not the leader in the commission of the offense. The post-conviction court denied relief after a hearing, finding that there was no proof Petitioner’s plea was coerced or that any of trial counsel’s actions were deficient. We affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT H. MONTGOMERY, JJ., joined.

W. Taylor Hughes, Alamo, Tennessee, for the appellant, Jeffrey Glenn McCoy.

¹ We note that Petitioner’s middle name is spelled “Glenn” in the caption of this opinion and “Glynn” in the caption and body of the opinion from his direct appeal. We choose to utilize the spelling “Glenn” in this opinion because that is the spelling used in the technical record from the lower court.

FILED

08/15/2023

Clerk of the
Appellate Courts

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Frederick Hardy Agee, District Attorney General; and Jason C. Scott and Scott G. Kirk, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Petitioner was indicted by a Gibson County grand jury for burglary of a Food Rite grocery store and theft of property valued at \$10,000 or more but less than \$60,000 in May of 2012. *McCoy I*, 2017 WL 6507232, at *1.² Before trial, the State made an offer to settle the case. Petitioner declined. After the trial started in July of 2016, Petitioner indicated that he wanted to accept the State's plea offer. *Id.* The State told Petitioner and trial counsel that the offer was withdrawn at that point, so Petitioner proceeded with trial. Not long thereafter, Petitioner changed his mind and entered an open plea, with the trial court to determine his sentence. At a sentencing hearing, the trial court reviewed Petitioner's extensive criminal history dating back to 1993 and including criminal activity in three states. *Id.* The trial court found Petitioner to be a career offender for the burglary conviction, sentencing him to 12 years at 60 percent release eligibility. For the theft conviction, the trial court deemed Petitioner qualified as a Range III offender and sentenced Petitioner to 12 years at 45 percent release eligibility. The trial court ordered the sentences to be served concurrently with each other but consecutively to a 25-year sentence from South Carolina based on Petitioner's "extremely extensive" record as a professional criminal. *Id.*

This Court affirmed the sentences on direct appeal. *Id.* at *2. Petitioner subsequently sought post-conviction relief by filing a pro se petition in which he alleged ineffective assistance of counsel. *McCoy II*, 2020 WL 1227304, at *1. The State's response alleged that the petition was untimely, failing to acknowledge Petitioner's direct appeal or application for permission to appeal. *Id.* The post-conviction court summarily dismissed the petition without appointment of counsel or a hearing. *Id.* On appeal, the State conceded error and this Court reversed and remanded for appointment of counsel and further proceedings. *Id.* at *2.

On remand, post-conviction counsel was appointed, and an amended petition was filed. In the amended petition, counsel for Petitioner argued that trial counsel failed to: (1) properly inform Petitioner of his potential sentence length; (2) litigate a motion to suppress;

² We take judicial notice of the records in Petitioner's prior appeals to this Court. *See Harris v. State*, 301 S.W.3d 141, 147 n.4 (Tenn. 2010) (noting that an appellate court may take judicial notice of its own records).

(3) present evidence at sentencing that Petitioner was under the influence of methamphetamine and was not the leader in the commission of the offense. The amended petition also sought recusal of the post-conviction court. The post-conviction court declined recusal.

At the hearing, post-conviction counsel specified that Petitioner was challenging trial counsel's failure to present mitigating evidence that might have affected his sentence and insisting that he would not have pled guilty if trial counsel had explained his potential sentence. Post-conviction counsel also challenged the post-conviction court's failure to grant the motion for recusal.

Trial counsel testified that he received his law license in April of 2014 and practiced primarily criminal defense since that time. Trial counsel testified that he replaced Petitioner's original counsel and that he conducted additional discovery after he reviewed the case files he received from original counsel. Trial counsel recalled that Petitioner had a sentence of "twenty-some-off-years" in South Carolina but was uncertain if the South Carolina crime was committed before or after the burglary and theft in the Gibson County case.

Trial counsel remembered that police executed a search warrant at another person's house and discovered evidence that connected Petitioner to the case. Trial counsel testified that he attempted to suppress the evidence discovered during the execution of the search warrant in part because the State did not produce the search warrant when requested. The trial court ruled that the evidence would be excluded if the State failed to produce the search warrant. Trial counsel recalled that the search warrant was eventually located prior to trial. Trial counsel reviewed the search warrant and did not think there would be "any merit" in challenging it. Trial counsel recalled that there was also DNA evidence from the scene of the burglary that connected Petitioner to the burglary. Trial counsel felt prepared for trial, claiming that he had done his "due diligence" and explained that he told Petitioner it would be "difficult for a jury to find him not guilty." Trial counsel was most concerned about the DNA evidence linking Petitioner to the scene of the crime.

Trial counsel testified that the State made a plea offer before trial. Trial counsel met with the prosecutor and Petitioner prior to trial. During the meeting, Petitioner informed the trial court that counsel had not fully explained his potential sentence exposure or his likelihood of success. Petitioner and trial counsel stepped into the hallway to discuss the same, despite trial counsel's insistence that they had discussions about these issues prior to the meeting. Petitioner chose to proceed with trial.

Trial counsel was "sure" that he and Petitioner discussed whether his sentence would run concurrently with or consecutively to the South Carolina sentence prior to this

meeting. However, trial counsel could not recall if the State filed a notice of enhancement or if he filed any mitigating factors.

Trial counsel recalled the “unique” situation where the State had initially offered 10 years at 45 percent and Petitioner refused the offer prior to trial. According to trial counsel, Petitioner later changed his mind and wanted to accept the plea offer after the jury was selected. The State would not honor the original offer at that point, changing the offer to 12 years at 45 percent. Petitioner was interested in this offer, but rejected it when the State could not guarantee to which sentence Petitioner’s pretrial jail credit would apply. The trial proceeded and, after two witnesses had testified, Petitioner again said that he wanted to accept the plea offer. At that point, the State revoked the offer and told Petitioner he would have to enter an open plea, in which the trial court would determine his sentence. Petitioner ultimately agreed to an open plea and the trial court accepted the plea after a plea colloquy.

Trial counsel remembered some discussion at the subsequent sentencing hearing about whether a conviction from Florida appearing on Petitioner’s criminal record actually belonged to someone else. Trial counsel testified that removing that conviction from Petitioner’s sentence would not affect his sentencing range. As to Petitioner’s drug use at the time of the offense, trial counsel could not recall if it was discussed at the sentencing hearing.

Petitioner testified at the post-conviction hearing that he initially filed a pro se post-conviction petition. He acknowledged that his first petition was dismissed and that he was successful on appeal, resulting in an evidentiary hearing. Petitioner claimed he wanted a “fair trial” where he was not “blind-sided” or “forced into doing something.”

Petitioner agreed that trial counsel represented him at the trial and eventual guilty plea hearing, but claimed that he was coerced into pleading guilty by trial counsel and the judge. Petitioner also claimed that he told the trial court he was under the influence of methamphetamine during the plea colloquy but insisted that he made the “untrue statement” while “under duress.” According to Petitioner, “everybody in that courtroom” knew he did not want to take the plea.

Petitioner insisted that DNA evidence should not have been enough to convict him because there were multiple ways his DNA could have gotten to the store. Petitioner complained about the introduction of the evidence from the search warrant. He insisted that trial counsel told him they were successful at the motion to suppress, but after the State produced the search warrant, trial counsel failed to challenge its contents. Petitioner testified that he did not know the State produced the search warrant until the day prior to

trial and that there was no affidavit for probable cause attached to the warrant. Additionally, Petitioner claimed the warrant was too broad.

Petitioner was unhappy because trial counsel did not preserve his right to challenge the search warrant on appeal and testified that he did not understand he would lose the right to appeal the validity of the warrant if he pled guilty. Petitioner claimed that he should have pled no contest.

Petitioner insisted that he did not understand how his prior record would affect his punishment. Petitioner claimed that trial counsel did not explain that the State sought enhanced punishment. Petitioner thought that trial counsel would make an argument to the court about his prior record at the sentencing hearing, but trial counsel failed to do so. Petitioner stated that a 1993 Florida judgment on his record did not belong to him and actually contained someone else's name, insisting "those prior convictions are not me." Petitioner then acknowledged that the other convictions on the record belonged to him, with the exception of a misdemeanor from Florida. Petitioner stated that most of the offenses on his record were driving offenses but admitted that he had a burglary conviction in South Carolina, a theft conviction in Tennessee, and a "couple of DUIs." Petitioner testified that he was "forced" into the guilty plea in the prior theft on his record.

After hearing the proof, the post-conviction court found "no credible evidence of coercion at all" and determined that there was "certainly a great deal of reluctance" in entering the plea. The post-conviction court found trial counsel "met and exceeded the standards of expertise" and that Petitioner failed to show that he was "denied a fair hearing or that he was influenced or pressured into entering his plea." The post-conviction court found no evidence of prejudice and that Petitioner was "the driving force behind the entrance of his pleas."

In a written order, the post-conviction court denied the petition and incorporated the oral findings of fact and conclusions of law. Petitioner appealed.

Analysis

Ineffective Assistance of Counsel

On appeal, Petitioner first insists that he received ineffective assistance at trial and that the post-conviction court erred in denying his petition on this basis. Specifically, Petitioner argues that trial counsel failed to object to the presentence report and failed to argue against consecutive sentencing. In addition, Petitioner argues that trial counsel failed to investigate and/or argue that mitigating factors applied to sentencing. The State argues that Petitioner failed to establish deficiency or prejudice.

To be successful in a claim for post-conviction relief, a petitioner must prove the factual allegations contained in the post-conviction petition by clear and convincing evidence. See T.C.A. § 40-30-110(f). “Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *State v. Holder*, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). Issues regarding the credibility of witnesses, the weight and value to be accorded their testimony, and the factual questions raised by the evidence adduced at trial are to be resolved by the post-conviction court as the trier of fact. See *Henley v. State*, 960 S.W.2d 572, 579 (Tenn. 1997). The post-conviction court’s findings of fact are therefore entitled to substantial deference on appeal unless the evidence preponderates against those findings. See *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001).

A claim of ineffective assistance of counsel is a mixed question of law and fact. See *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). We review the post-conviction court’s findings of fact de novo with a presumption that those findings are correct. See *Fields*, 40 S.W.3d at 458. However, we review the post-conviction court’s conclusions of law purely de novo. *Id.*

When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, “the petitioner bears the burden of proving both that counsel’s performance was deficient and that the deficiency prejudiced the defense.” *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To establish deficient performance, the petitioner must show that counsel’s performance was below “the range of competence demanded of attorneys in criminal cases.” *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). To establish prejudice, the petitioner must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Further,

[b]ecause a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.

Goad, 938 S.W.2d at 370 (citing *Strickland*, 466 U.S. at 697). Moreover, in the context of a guilty plea, “the petitioner must show ‘prejudice’ by demonstrating that, but for counsel’s errors, he would not have pleaded guilty but would have insisted upon going to trial.” *Hicks*

v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998); *see also Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Petitioner first insists that trial counsel should have challenged the presentence report because there were convictions on the report that he did not commit. The only proof to support this claim at the post-conviction hearing was the testimony from Petitioner. Petitioner failed to present any judgments or additional proof to support his testimony. Petitioner's uncorroborated testimony is insufficient to carry the burden of proof; judgments are entitled to the presumption of validity. *See State v. Kerley*, 820 S.W.3d 753, 757 (Tenn. Crim. App. 1991) (citing *Swaw v. State*, 457 S.W.2d 875, 876 (1970); *Morgan v. State*, 445 S.W.2d 477, 480 (1969)). Moreover, Petitioner only claimed two of the prior convictions were not his and trial counsel testified that even if the challenged convictions were removed from his record, Petitioner's sentencing range would not be affected. "This Court has consistently held that information in a presentence report is reliable hearsay which may be admitted if the opposing party is offered the opportunity to rebut the same." *Gerald Deon Jenkins v. State*, No. E2010-00938-CCA-R3-PC, 2011 WL 810770, at *5 (Tenn. Crim. App. Mar.9, 2011) (citing *State v. Baker*, 956 S.W.2d 8, 17 (Tenn. Crim. App. 1997); *State v. Richardson*, 875 S.W.2d 671, 677 (Tenn. Crim. App. 1993)), *perm. app. denied* (Tenn. May 25, 2011). Petitioner has failed to demonstrate that he suffered any prejudice from trial counsel's failure to challenge the presentence report. Therefore, Petitioner is not entitled to relief.

Petitioner next argues that trial counsel should have argued against consecutive sentencing. Specifically, he claims that trial counsel should have "performed the proper investigation and made the proper objections." Petitioner failed to support his blanket argument with testimony or other proof showing what trial counsel would have discovered with additional investigation or what mitigation evidence trial counsel could have submitted to the trial court. Without submitting any proof, Petitioner failed to establish either prong of *Strickland*. Petitioner is not entitled to relief on this issue.

Lastly, Petitioner insists that trial counsel was ineffective because he failed to investigate potential mitigating factors "in order to defeat the State's intent to seek an enhanced sentence." Petitioner failed to identify mitigating factors that could have been used by trial counsel, merely arguing that one felony and one misdemeanor on his record were not his without providing any proof to support his argument. Trial counsel testified that Petitioner received the minimum possible sentence for his convictions. The post-conviction court found Petitioner was not a credible witness and that there was no prejudice to Petitioner. Without offering any proof to support his argument, Petitioner has failed to establish either prong of *Strickland* and is, therefore, not entitled to relief.

Guilty Plea

Next, Petitioner complains that his guilty plea was not knowingly, voluntarily, or intelligently entered. Specifically, Petitioner argues that at the time he entered the plea, he did not understand the penalties he was facing and that he entered the plea under duress. Petitioner insisted that if trial counsel had investigated the case, he would have discovered mitigating evidence to defeat the enhanced sentence. The State argues that the plea was entered voluntarily.

When analyzing a guilty plea, we look to the federal standard announced in *Boykin v. Alabama*, 395 U.S. 238, 243 (1969), and the state standard set out in *State v. Mackey*, 553 S.W.2d 337 (Tenn. 1977). *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999). In *Boykin*, the United States Supreme Court held that there must be an affirmative showing in the trial court that a guilty plea was voluntarily and knowingly entered before it can be accepted. *Boykin*, 395 U.S. at 242. Similarly, our Tennessee Supreme Court in *Mackey* required an affirmative showing of a voluntary and knowledgeable guilty plea, namely, that the defendant has been made aware of the significant consequences of such a plea. *Pettus*, 986 S.W.2d at 542.

A plea is not “voluntary” if it results from ignorance, misunderstanding, coercion, inducements, or threats. *Blankenship v. State*, 858 S.W.2d 897, 904 (Tenn. 1993). The trial court must determine if the guilty plea is “knowing” by questioning the defendant to make sure he fully understands the plea and its consequences. *Pettus*, 986 S.W.2d at 542; *Blankenship*, 858 S.W.2d at 904. Trial courts look to the following factors in determining whether a defendant’s guilty pleas are knowing and voluntary:

the relative intelligence of the [defendant]; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

Blankenship, 858 S.W.2d at 904.

In finding that Petitioner’s guilty plea was knowing and voluntary, the post-conviction court found “no credible evidence of coercion at all,” and no evidence that trial counsel, the trial court, or “anyone else” coerced Petitioner into entering the guilty plea. The testimony at the post-conviction hearing from trial counsel indicated that trial counsel explained the possible sentences to Petitioner. Though Petitioner failed to include the transcript of the guilty plea hearing, we have taken judicial notice of the prior record. The

record reflects that Petitioner initially chose to go to trial but changed his mind after the jury was sworn and several witnesses testified.

The transcript of the guilty plea hearing shows that the trial court questioned Petitioner about his understanding of the nature of his guilty plea. Petitioner testified that trial counsel was “excellent” and affirmed that he understood that he was entering an open plea with the trial court to determine his sentence. We conclude that the evidence does not preponderate against the post-conviction court’s finding that Petitioner’s guilty plea was knowingly and voluntarily entered or that Petitioner was not prejudiced by any alleged deficiency of his trial counsel. Petitioner was neither coerced nor pressured into the plea agreement. The trial court made a thorough and direct inquiry as to the voluntariness of Petitioner’s plea. Petitioner stated under oath that he understood the rights he was waiving. Petitioner is not entitled to relief.

Conclusion

For the foregoing reasons, the judgment of the post-conviction court is affirmed.

TIMOTHY L. EASTER, JUDGE